Office-Supreme Court, U.S.
FILED
MAR 8 1965
JOHN F. DAVIS, CLERK

In the
Supreme Court of the United States

OCTOBER TERM, 1964

No. 968

WM. H. SIMMONS, *Petitioner*

vs.

THE STATE OF WASHINGTON, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT

WM. H. SIMMONS
Petitioner

12513 24th Avenue N.E.
Seattle, Washington 98125

THE ARGUS PRESS, SEATTLE, WASHINGTON

In the

Supreme Court of the United States

OCTOBER TERM, 1964

No.....

WM. H. SIMMONS, *Petitioner*

vs.

THE STATE OF WASHINGTON, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT

WM. H. SIMMONS
Petitioner

12513 24th Avenue N.E.
Seattle, Washington 98125

THE ARGUS PRESS SEATTLE WASHINGTON

INDEX

	Page
Opinions Below	1
Jurisdiction	1
a. Grounds	1
b. Date of Judgment: December 7, 1964	1
c. Statutory provisions: 28 U.S.C. 1257 (3)	2
Questions Presented	2
Constitutional Provisions	2
Statement of the Case	3
Argument	6
Reasons for Granting Writ	6
Conclusion	10

Appendix—Opinion of the Supreme Court of the State of Washington, 295 P.2d 1013 ... 13

TABLE OF CASES

Brotsky v. State of California (1962) 368 P.2d 697 ... 7

Garrison v. Louisiana, October Term, 1964, November 23, 1964, No. 4 ... 9

Henry v. Mississippi (Jan. 18, 1965) No. 6, October Term, 1964 ... 8

Konigsberg v. State Bar (1957) 353 U.S. 252 ... 9

N.A.A.C.P. v. Button (1963) 371 U.S. 415 ... 9

New York Times v. Sullivan (1964) 376 U.S. 254 ... 9

Schware v. Board of Bar Examiners (1957) 353 U.S. 232 ... 8

Simmons, In re (1964) 395 P.2d 1013 ... 1, 6, 13

Willner v. Committee on Character (1963) 373 U.S. 96 ... 8

STATUTES

28 U.S.C. 1257 (3) ... 2

CONSTITUTIONS

	Page
United States Constitution	
First Amendment	1, 2
Fifth Amendment	3
Fourteenth Amendment	1
Washington State Constitution—Art. I, § 2	3
Washington State Constitution—Art. I, § 3	3

COURT RULES

Rules Peculiar to the Business of the Supreme Court of the State of Washington, Rule 15	1
Washington Supreme Court Rules of Pleading, Practice and Procedure, Rule 33	3, 6
Washington Supreme Court Rules for Discipline of Attorneys, Rule 7, J	6

In the

Supreme Court of the United States

WM. H. SIMMONS, *Petitioner*, vs. THE STATE OF WASHINGTON, *Respondent*.	No.....

PETITION FOR WRIT OF CERTIORARI TO THE WASHINGTON STATE SUPREME COURT

OPINIONS BELOW

In re Simmons (1964) 395 P.2d 1013, set forth in the Appendix.

JURISDICTION

a. Grounds:

First: The State wilfully denied Petitioner due process rights, guaranteed by the Fourteenth Amendment, by refusing to recognize his right to discovery process in disbarment proceedings.

Second: The State punished Petitioner with disbarment for the exercise of his right of free speech, in violation of the 1st, 5th and 14th Amendments of the Federal Constitution.

b. Date of Judgment: December 7, 1964

Under Rule 15 of the Rules Peculiar to the Business of the Supreme Court of the State of Washington, the decision, dated and filed October 22, 1964, was to ". . . be final thirty days after its filing, unless during such

period a petition for rehearing be filed." Such was properly filed and, after consideration, it was denied. The date of denial is December 7, 1964.

c. Statutory provisions: 28 U.S.C. 1257 (3):

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by the Supreme Court as follows:
>
> (1) . . .
>
> (2) . . .
>
> (3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution . . . of . . . the United States."

QUESTIONS PRESENTED

1. May a lawyer be disbarred for legitimate public criticism of public officials?

2. Is a lawyer entitled to due process in a State disciplinary proceeding; and, if so: Does due process include the right of discovery so an accused lawyer may ascertain the evidence and charges in order to prepare and present his defense, if any?

CONSTITUTIONAL PROVISIONS

United States—First Amendment:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

United States—Fifth Amendment:

> "No person shall . . . be deprived of life, liberty or property without due process of law. . . ."

Washington State—Article I, § 2:

> "The Constitution of the United States is the supreme law of the land."

Washington State—Article I, § 3:

> "No person shall be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

Petitioner was admitted to practice in Washington on September 10, 1952. On December 7, 1964, he was disbarred. The basis of the disbarment is defined and limited in the official opinion set forth in the Appendix, as follows:

> "In our review of the record . . ., we *narrow and limit our consideration and conclusions* to those findings concerning utterances made by respondent during the week in question, with respect to the city officials, the prosecuting attorney, the *quo warranto* and contempt proceedings, and the superior court judge before whom the latter proceedings were heard." (Emphasis supplied)

On August 10, 1962, one month prior to the disbarment hearing, and, pursuant to Rule 33, Petitioner submitted written interrogatories to the Bar Association. Under the provisions of that rule, the Association was required to supply answers thereto within fifteen days, or in the alternative:

> ". . . serve written objections thereto with a notice of hearing the objections at the earliest practicable time."

Objections were not served, nor were answers supplied. After the expiration of the fifteen-day answering period, Petitioner served and filed the following written demand:

> "Comes now Respondent and respectfully demands that the Bar Association forthwith and immediately serve its answers to Respondent's interrogatories. The interrogatories were served August 10, 1962, and Rule 33 of the Rules of Pleading, Practice and Procedure requires that answers shall be served thereafter within fifteen days. You are hereby notified that in order for Respondent to be adequately and sufficiently prepared for a hearing by September 10, 1962, the answers must be served without further delay.
>
> "DATED this 29th day of August, 1962."

This demand was ignored. Subsequently, on September 10, 1962, the date of the hearing, Petitioner objected to the hearing on the grounds he was being denied due process of law. His objections were overruled. There is no question of waiver. The following extracts from the record are unimpeachable:

> "MR. LONG [Association Counsel] However, I understand that the Respondent wishes the record to show that he does not waive or has not waived his right to have answers furnished him to the interrogatories which were submitted. Is that a correct statement of your position, Mr. McIntosh?
>
> MR. MCINTOSH [Petitioner's Counsel] Yes. We will ask that the record show that specifically (St. 6:5)
>
> * * *
>
> MR. SIMMONS: It was your understanding, from your position, that Respondent at this hearing did

not, by entering into the stipulation or otherwise, waive what he thought was his right to have those interrogatories answered?

MR. LONG: That is correct. (St. 6:5 and following)

* * *

CHAIRMAN McMULLEN: ... Now, Mr. Simmons objected to the proceedings. I suppose you meant by that to this hearing proceeding today, because of the failure of the Bar Association counsel to answer your interrogatories?

MR. McINTOSH: Yes. (St. 9:5)

* * *

MR. McINTOSH: Well, whatever your understanding was with Mr. McIntosh's position on the phone concerning the interrogatories, you were aware that the position was that we had been deprived of a proper defense?

MR. LONG: Yes. I received your demand too, yes." (St. 167:7-13)

The Bar Association had charged that Petitioner made "numerous" statements and comments, "many" of which were violations of ethical standards. Such statements formed the ultimate basis sustaining disbarment. The failure of the Association to answer the interrogatories prevented Petitioner from learning the "many" of the "numerous" alleged improper statements. He could not speculate on what the "many" of the "numerous" were. Thus, he could not prepare his defense. Thus, he was denied due process. This claim was rejected by the Association and the Washington Supreme Court—Cf: Appendix.

ARGUMENT

Reasons for Granting Writ:

The discovery rules as well as those for disciplining attorneys are substantial duplicates, procedure-wise, in California and Washington. The discovery rules in Washington are patterned after the federal rules. Both states have Rule 33. Washington also has the following:

> "Depositions for use at the hearing may be taken either within or without the state, upon either written or oral interrogatories before any member of the panel or before any other officer authorized to administer an oath by the law of the jurisdiction where the deposition is taken. The manner of taking such depositions shall conform as nearly as practicable to that prescribed for the taking of depositions in the superior court of the State of Washington except as otherwise provided in these rules." (Rules for Discipline of Attorneys, Rule 7, J)

Under the dominion of the Federal Constitution, as the supreme law of the land, citizens of Washington and California are entitled to equal due process. Washington has denied Petitioner the constitutional protection he would have been accorded as a citizen in California. The following excerpts fully sustain this declaration:

> "We do not reach the interesting question as to whether respondent was entitled, as a matter of procedural process, to demand and receive answers to his prehearing written interrogatories." (*In re Simmons* (1964) Appendix)

On the identical issue, California said:

> "The issues before us demand determination of

> whether or not a right exists to have discovery by deposition and other vehicles (including interrogatories and production of documents)." (*Brotsky v. State of California* (1962) 368 P.2d 697, 703)

The *Brotsky* decision not only meets the issue but also declares the right.

Petitioner reasons and suggests to this Court, that the inconsistent decisions of Washington and California are of some moment in determining the propriety of granting this writ. Also, since Petitioner is presently qualified to practice law and is permitted to practice law in the U.S. District Court as well as the Ninth Circuit Court of Appeals, this should be considered. Finally, fundamental federal issues are presented concerning due process and free speech.

The Washington Court has already determined these issues contrary to the decisions of this Court and the provisions of the Federal Constitution.

Petitioner feels that the unjust deprivations he has been relegated to suffer should be corrected. The issues presented are precise and the rights involved are serious. Such merits granting this petition. The following excerpts express Petitioner's views and, being unable to improve on the language, Petitioner adopts same:

> " 'A claim of a present right to admission to the bar of a State and a denial of that right is a controversy' . . . Moreover, the requirements of procedural due process must be met before a State can exclude a person from practicing law. 'A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amend-

ment.'" (*Willner v. Committee on Character* (1963) 373 U.S. 96, 102 — quoting *Schware v. Board of Bar Examiners* (1957) 353 U.S. 232, 238)

"It is, of course, a familiar principle that this Court will decline to review state court judgments which rest upon independent and adequate state grounds. . . . But it is important to distinguish between state substantive grounds and state procedural grounds. . . . Accordingly, we have consistently held that the question of when and how defaults in compliance with state procedural rules can preclude our consideration of a federal question is itself a federal question." (*Henry v. Mississippi* (Jan. 18, 1965) No. 6, October Term, 1964)

"The constitutional requirements in this context may be simply stated; in all cases in which admission to the bar is to be denied on the basis of character, the applicant, at some stage of the proceedings prior to such denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence." (*Willner v. Committee on Character* (1963) 373 U.S. 96, 107—Mr. Justice Goldberg concurring with Mr. Justice Brennan and Mr. Justice Stewart joining.)

"We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated—free to think, speak, and act as members

of an Independent Bar." (*Konigsberg v. State Bar* (1957) 353 U.S. 252, 262)

"For a State may not, under the guise of prohibiting professional misconduct, ignore constitutional rights." (*N.A.A.C.P. v. Button* (1963) 371 U.S. 415, 439)

"This Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. This is such a case, particularly since the question is one of alleged trespass across 'the line between speech unconditionally guaranteed and speech which may legitimately be regulated.' . . . In cases where that line must be drawn, the rule is that we 'examine for ourselves the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.' . . . We must 'make an independent examination of the whole record,' . . . so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression." (*New York Times v. Sullivan* (1964) 376 U.S. 254, 285)

"For speech concerning public affairs is more than self-expression; it is the essence of self-government. The First and Fourteenth Amendments embody our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'" (*Garrison v. Louisiana*, October Term, 1964, November 23, 1964, No. 4)

CONCLUSION

It is sincerely believed that this petition has merit. Therefore, Petitioner urges the Court to act favorably.

Respectfully,

WM. H. SIMMONS, *Pro se*

12513 24th Avenue N.E.
Seattle, Washington 98125